

Frank Kendall
Vice President
Engineering

Raytheon Company
141 Spring Street
Lexington MA 02173

617 860 2104
FAX 617 860 2426

Raytheon

RECEIVED
MAR 15 1996
FCC MAIL ROOM

March 11, 1996

DOCKET FILE COPY ORIGINAL

Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Notice of Proposed Rule Making (NPRM)
ET Docket No. 93-62
In the matter of : Guidelines for Evaluating Environmental Effects
of Radiofrequency (RF) Radiation

Supplemental Reply Comments of Raytheon Company

Dear Sir or Madam:

By letter dated November 5, 1993, Raytheon Company (Raytheon) supported the FCC's proposal to adopt the new standard, ANSI/IEEE C95.1-1992, to replace the older standard, ANSI C95.1-1982, in its procedures for "evaluating environmental significance". Raytheon since has learned that the FCC is considering alternatives, such as NCRP Report No. 86, and "hybrids", as opposed to the unaltered adoption of ANSI/IEEE C95.1-1992.

The FCC has stated that its motive for this change in direction is based on comments to ET Docket No. 93-62 by the Environmental Protection Agency (EPA) dated November 9, 1993 (EPA Comments). However, the docket record on the private meeting between the FCC and the EPA on December 5, 1995 on this subject is silent.

No. of Copies rec'd 0
List ABCDE

Raytheon wishes to advise FCC of the following:

1. Federal Participation in the Development and Use of Voluntary Standards, OMB Circular No. A-119, Revised, dated October, 20, 1993, Sections 6 and 7(a), requires reliance upon and adoption of voluntary standards and participation in voluntary standards bodies by all executive agencies, including independent commissions such as the FCC. The FCC is failing to observe this policy by disregarding ANSI/IEEE C95.1-1992 and by not participating in the IEEE standards process.

2. The National Council on Radiation Protection and Measurement (NCRP) Report No. 86, (NCRP No. 86), is not a voluntary standard as defined by OMB A-119, Sections 5(c), 5(e), and 5(f). Rather, NCRP No. 86 is a one-time report prepared by a six-person, privately appointed committee of a publicly funded congressional chartered body. NCRP No. 86 does not represent a consensus. Instead, it represents the limited view of only a few selected people. The FCC consideration and use of NCRP No. 86 in the matter of ET Docket No. 93-62 disregards the policy requirements of OMB A-119, which mandates reliance upon voluntary standards.

3. The EPA comments to ET Docket No. 93-62 dated November 9, 1993, (EPA comments) are in violation of OMB A-119 for reasons previously stated in items 1 and 2, because:

a. The EPA advocates abandonment of the voluntary standard ANSI/IEEE C95.1-1992 in favor of the unqualified NCRP Report No. 86.

b. The EPA comments recommending hybridization are cast as if the EPA were a voluntary standards organization. The EPA, like the FCC, is not qualified to conduct itself as a voluntary standards organization.

4. The EPA comments were rebutted scientifically by the IEEE, a legitimate voluntary standards organization as defined by OMB A-119, in "Reply Comments of the IEEE-SC. 28 ..." submitted for ET Docket No. 93-62. The FCC reliance upon unscientific material in its deliberations and rule making procedures is inappropriate for an independent commission. This situation immediately renders suspect anything produced by the FCC henceforth in spite of its enviable scientific reputation and otherwise untarnished record.

5. The FCC is attributing validity to the EPA comments even though there is no public record of any Executive or Congressional mandate for the EPA to engage in any activity with radiofrequency radiation.

a. The President's Reorganization Plan No. 3 of 1970 specifically excludes the EPA from any activity with electronic product radiation. Please refer to Section 2(a)(3) of the Plan.

b. The Clean Air Act, and particularly Section 309 thereof, does not rescind the prohibition of the Reorganization Plan No. 3 of 1970 related to electronic product radiation. The Clean Air Act relates to substances. Radiofrequency radiation is not a substance; therefore, the Clean Air Act does not apply.

c. EPA General Counsel Opinion 78-1 restricts the EPA to activities related to the physical substances that emit ionizing radiation as opposed to non-ionizing (radiofrequency) radiation.

Raytheon strongly urges the FCC to comply with all the requirements of OMB A-119 in its administrative, deliberative, regulation and rule making procedures. To do otherwise is contrary to Federal Government policy and will severely impact persons and corporations doing business in the radiofrequency radiation area.

The FCC, by giving legitimacy to NCRP Report No. 86, is creating a de facto national public health standard by its rule making procedure without the due process usual and customary for such standards.

Adoption or incorporation of NCRP Report No. 86 will result in increased nuisance litigation for persons and companies involved with radiofrequency radiation. As we have seen with the global reaction to the "leaked" "NCRP" pseudo science report on 60Hz, where fear and suspicion about home appliances has been inflamed, the use of anything but a legitimate consensus standard, such as ANSI/IEEE C95.1-1992, will entice people to consider as legitimate the "standard" promulgated by the FCC. The resulting conflict will increase litigation concerning products, services, and installations previously "approved" by the FCC. Currently licensed installations might become "unsafe". Jobs, money, and new business opportunities will be lost. Development of new products for domestic manufacture and sale will be inhibited.

Product performance standards activities, as in progress with IEEE SCC34, could be impacted adversely. The international scientific, business, and military communities readily recognize ANSI/IEEE C95.1-1992. Products designed and performing to this standard will be acceptable internationally, but not domestically where performance might not meet FCC "regulations".

It is unclear to what extent the FCC will adopt or incorporate NCRP Report No. 86 into its rulemaking. Whether it be Figure 17.2, Section 17.4.2, or all of Chapter 17, the FCC tacitly will be endorsing the entire report. Portions of the report, such as Chapter 11 and Section 17.4.7, cite some effects which never have been replicated adequately and remain controversial. These effects are reported at levels far below those of ANSI/IEEE C95.1-1992, and even far below the levels of Chapter 17 in the NCRP Report No. 86 itself. The FCC's use of NCRP Report No. 86 in any way may be interpreted by some as implying hazards where none are known to exist.

As a result of this implication, innocuous equipment such as door openers, intrusion alarms and remote controlled devices could be perceived as unsafe and as "public safety hazards". Industrial equipment such as heaters and sealers could suffer a similar fate. Because this equipment is an important part of commerce and is all pervasive, disruption of business and ordinary life could ensue. For example, handicapped persons could be denied access to public places because door openers might represent a "public safety hazard". The microwave oven, an appliance whose radiofrequency emissions are regulated for public safety by the Food and Drug Administration, could be perceived in a similar unwarranted unfavorable manner.

Raytheon Company's position is shared by many. We hope that the FCC will consider our comments with the same degree of serious intent by which we express our concerns.

Sincerely,

A handwritten signature in black ink, appearing to be "F. M. K. R.", written in a cursive style.